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IN THE

# Supreme Court of The United States

## No. 577

MRS. LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

Petitioner,

versus

A. M. LANDRY & SONS, INC. and THE TRAVELERS INS. CO.,

Respondent.

On Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

## PETITIONER'S REPLY BRIEF

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MAY IT PLEASE THE COURT:

Most of the arguments contained in respondents' brief have been traversed in petitioner's original brief. Several of respondents' allegations, however, require supplemental comment.

## I.

## INCONSISTENCY IN RESPONDENTS' ARGUMENT

Respondents in their brief in opposition to certiorari agree with the proposition that the Jones Act provides that the

decedent's personal representative, the administrator, is the only party qualified to file suit under the Act for wrongful death. Nevertheless, respondents take the position that the Act allows someone other than the administrator to settle a claim under the act and terminate the entire matter. We submit that these propositions are inconsistent.

If someone other than the party specifically designated to file suit is allowed to settle the matter and terminate the proceeding, the power and authority of the party designated to file and prosecute the suit would be destroyed and the specific designation of the administrator as the proper party in a Jones Act proceeding would be rendered meaningless. The express words of the Jones Act designating the administrator as the only party to file suit for wrongful death can only be effectuated if that party is the only one capable of terminating the matter either by the successful prosecution of the suit or by settlement.

## II.

## POLICY BEHIND DESIGNATION OF ADMINISTRATOR AS PROPER PARTY IN JONES ACT PROCEEDINGS

Congress in selecting the Administrator as the only proper party to file suit under the Jones Act of course had reason for selecting that party rather than another representative. This reason we submit was that the Administrator is required to file a bond and is held to a high standard of trust.

A different representative such as a minor's guardian may be in a different position. In Louisiana such guardian

or natural tutor is not required to file a bond. The natural tutor instead may file a certificate setting forth the total value of the minor's property. Although this certificate serves as a mortgage on the property of the natural tutor and is a form of security, this security device is not as satisfactory in Jones Act proceedings as a bond, the security device required of an administrator.

A legal mortgage lacks the stability and certainty of a bond and may be superseded by other liens or the property may be destroyed. For these reasons we submit Congress designated the administrator rather than a natural tutor or any other representative as the proper party to bring suit under the Jones Act. For the same reasons no one but the administrator should be allowed to terminate such a proceeding by a settlement.

## III.

## CASE CITED BY RESPONDENTS NOT APPLICABLE

In support of their opposition to the petitioner for certiorari the Respondents cite *Larry* v. *Chicago B. & Q. R. Co.*, 74 F.S. 798 (E.D. Mo. 1947). In this case a widow and only heir of the decedent settled a claim for the wrongful death of her husband and then subsequently brought an action under the Jones Act as administratrix. The district court dismissed her suit under the Jones Act because the beneficiary and administratrix were one and the same person.

Such a situation does not exist here. In the instant case the person who allegedly settled the claim and the administratrix are not one and the same person. Moreover, the

person who allegedly settled the claim is a common law wife and thus may not even be an heir or beneficiary within the purview of the Jones Act. See Footnote 1, Page 6 of Petitioner's brief for certiorari. In addition, the common law wife in this case has children from a former marriage. Such a situation may make it difficult for her to distribute the funds for the exclusive benefit of the children of the decedent. In the instant case a person who could not file suit and who may not even be a beneficiary settled a claim for wrongful death arising under the Jones Act.' We submit the case cited by respondents does not sanction such a practice.

## IV.

## DECISION IN INSTANT CASE WILL AFFECT OTHER CASES

In their brief in opposition to the petition for certiorari the Respondents state that there are no "special or important reasons" for the Supreme Court to grant certiorari in this case. We submit that there are special and important reasons for granting certiorari in this case.

The question raised in the instant case is: who are the proper parties to terminate cases under the Jones Act by settlement and grant releases for death claims arising under this Act. This question is not peculiar to the instant case. It is presented in every case arising under the Jones Act. It is a question which has not as yet been passed on by this Honorable Court and one of grave importance.

## V.

## CONCLUSION

For the foregoing reasons, petitioner Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit and that, after due proceedings had, the judgment of that Court may be reviewed and reversed to the end that petitioner's claim for damages shall be reinstated and remanded to the District Court for trial on its merits.

Respectfully submitted

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Of Counsel:
Kierr and Gainsburgh
Eldon E. Fallon

## CERTIFICATE OF SERVICE

I, Raymond H. Kierr, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day served upon the respondent herein a copy of the attached application for certiorari with its appendices, by depositing the same in the United States mails, postage prepaid at New Orleans, Louisiana, addressed to George Denegre, Esq., and Donald L. King, Esq., 210 Baronne Street, New Orleans 12, Louisiana, this _____ day of _____, 196__.

_____

RAYMOND H. KIERR

## FOOTNOTE CITED ON PAGE 4

[1]Only $1,960 of the funds which the common law wife received was paid by the Respondents in this proceeding. The remainder, approximately $45,000 was a payment by other parties under a Guest Voluntary Settlement Endorsement insurance agreement.

The Respondents are now attempting to utilize this purported settlement in an inadequate amount signed by an ineligible party who is not a beneficiary to permit them to escape from their responsibility under the Jones Act.